

Bird & Bird

Whistleblowing "in a new way"

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Whistleblowing „in a new way“

Whistleblowing has undoubtedly been one of the hottest topics in the employer environment in Slovakia recently.

Although the reporting of anti-social activities is not new, as this issue has been regulated in detail by a special law since 2019,¹ as a result of implementing EU legislation,² Slovak legislators have amended a number of provisions of the Act, effective from 1 July 2023 and 1 September 2023 respectively³ (the "**Amendment**").

The Amendment aims to strengthen the position of whistleblowers, as well as introduce new obligations for employers, the non-compliance of which will now be punished by higher rates of fines or new financial penalties.

Let's take a look together at the key changes that the Amendment brings with it.

¹ Act No. 54/2019 Coll. on the Protection of Whistleblowers of Anti-Social Activity and on Amendments and Supplements to Certain Acts, as amended (the "**Act**").

² Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report infringements of Union law, as amended.

³ The Amendment has a split effective date, meaning that some of the changes entered into force on 1 July 2023 and some will enter into force on 1 September 2023.

Key changes effective from 1 July 2023

<p>1 Extension of the range of persons to whom whistleblower protection will apply</p>	<p>In order to provide protection to as many whistleblowers as possible, the circle of persons to whom protection is guaranteed includes not only employees or close persons who are in a dependent relationship with the whistleblower, who is an employee of the same employer as the close person, but also persons who are in a similar relationship other than an employment relationship.</p> <p>This term refers in particular to persons performing work under one of the agreements on work performed outside the employment relationship, self-employed persons, sole traders, contractors, members of the statutory bodies of employers, temporary workers, volunteers, etc.</p> <p>Whistleblower protection also applies under certain conditions to former employees and persons or job applicants whose employment relationship has not yet been established, as well as to anonymous whistleblowers.</p> <p>In general, the law is intended to provide protection to all whistleblowers who report crime or other anti-social activity in good faith.</p>
<p>2 Extension of the range of offences or activities considered as serious anti-social activities</p>	<p>The Amendment changes the upper limit of the criminal offence from 3 years to 2 years for serious antisocial activities across the board. It also expands the range of offences explicitly listed in the Act (e.g. theft under Section 212 of the Criminal Code, embezzlement under Section 213 of the Criminal Code, unauthorised access to a computer system under Section 247 of the Criminal Code, unauthorised employment under Section 251a of the Criminal Code), which fall under serious anti-social activity, in relation to which the whistleblower will be granted protection if they report such an offence.</p>
<p>3 Extension of the range of public authorities competent to receive the notification</p>	<p>In addition to the Whistleblowers' Protection Office, the public authorities competent to receive a notification are in particular the public prosecutor's office or the administrative authorities competent to deal with an administrative offence which constitutes a serious anti-social activity.</p>
<p>4 New developments concerning retaliation</p>	<p>The Amendment introduces a prohibition on retaliation, as well as a prohibition on the threat of retaliation against not only the whistleblowers themselves, but also against persons close to the whistleblower, persons who have provided assistance to the whistleblower in connection with the report, or against the person in charge of the employer's review of the report.</p> <p>The Amendment also introduces a definition of the concept of retaliation, as well as examples of such retaliatory measures, which include, in particular, dismissal, immediate termination of employment, termination of employment during a probationary period or non-renewal of employment for an indefinite period, dismissal, downgrading or refusal of promotion, withdrawal from a contract for the supply of goods and services, etc.</p>
<p>5 Increased fines</p>	<p>The Amendment further increases the rates of fines, specifically increasing the fine from EUR 2,000 to EUR 6,000 (and up to EUR 12,000 in the case of repeated infringements) for a natural person who: (i) either threatens, attempts to sanction or penalises a whistleblower in connection with making or publishing a communication, (ii) breaches the obligation of confidentiality as to the identity of the whistleblower or the identity of the person concerned, or (iii) attempts to prevent or impede the making or publication of a communication.</p>

Key changes effective from 1 September 2023

<p>1 Obligation to establish an internal whistleblowing screening system and the related obligation to establish an internal whistleblowing regulation</p>	<p>The Amendment introduces the obligation to introduce an internal system for verifying notifications not only for those employers who have at least 50 employees or for those employers who are public authorities and employ at least 5 employees, but also for all employers who provide financial services, transport safety services or environmental services within the scope of their activity.</p> <p>We would like to remind you that the abovementioned entities are obliged under the Act to issue an internal regulation (the so-called whistleblowing directive/guideline), in which they should provide details on: (i) filing notifications, (ii) verifying notifications and the powers of the responsible person when verifying notifications, (iii) confidentiality of the identity of the whistleblower and the identity of the person concerned, (iv) registration of notifications, (v) informing the whistleblower of the outcome of the verification of the notification, (vi) processing the personal data contained in the notification, (vii) taking measures to remedy the deficiencies identified in the verification of notifications and communicating with the whistleblower about these measures, (viii) taking measures against obstruction of the notification of anti-social activities.</p>
<p>2 Obligation to designate a person responsible for receiving, acknowledging and verifying notifications with the employer</p>	<p>Under the Amendment, the employer has a legal obligation to designate a person responsible for verifying notifications from among its employees. This can either be a specific employee or a so-called organisational unit of employees working for the employer. Employees carrying out the activities of the person responsible must have the professional qualifications to fulfil these statutory obligations.</p> <p>An employer can only outsource the duties of the person responsible (outsourcing) in the scope of receiving, confirming and verifying notifications if it employs fewer than 250 employees or is not a public authority. Verification of notifications by an external company will only be possible if the employer has fewer than 250 employees and is not a public authority.</p>
<p>3 Prohibition of outsourcing the responsible person's duties for employers with 250 employees or more</p>	<p>Under the Amendment, employers with 250 employees or more or employers who are public authorities may only perform the duties of the responsible person to the extent of receiving and acknowledging notifications. Such an employer cannot outsource the verification of notifications, but must ensure that it is carried out by its own responsible person, i.e. its own employee or an employee unit of the employer.</p>

4 Introduction of new statutory time limits in relation to examining notifications

The Amendment introduces a new obligation for the employer to acknowledge receipt of the notification within 7 days of receipt to the whistleblower.

The employer must, within 90 days of the expiry of the 7-day period for notification of receipt of the notification, i.e. a total of 97 days from receipt of the notification, verify and notify the whistleblower of the result of the verification of the notification.

Also, if the employer refers the notification to law enforcement authorities under the Criminal Procedure Code, the employer is obliged to request the result of the verification from the law enforcement authorities and subsequently, within 10 days of receipt of the result of the verification, to inform the whistleblower of the result of such verification of the notification.

5 New financial penalties

The Amendment introduces new financial penalties for legal persons/employers, in particular: (i) a fine of up to EUR 100,000 for anyone who takes an employment action against a whistleblower without the consent of the Whistleblowers' Protection Office, or who threatens to retaliate against a whistleblower, attempts to retaliate against a whistleblower, or retaliates against a whistleblower in connection with a whistleblower's submission of a report, or (ii) a fine of up to EUR 30,000 for a whistleblower's submission of a report, or (iii) a fine of up to EUR 30,000 for a whistleblower's submission of a whistleblower's submission of a report to the entity that fails to take measures to remedy the deficiencies identified in the course of monitoring compliance with the obligations of the Act or fails to submit to the Whistleblowers' Protection Office a written report on the measures taken to remedy the identified deficiencies.

The Amendment also introduces new financial penalties for legal entities/employers that are not public authorities and employ between 50 and 250 employees or employers that are public authorities and employ between 5 employees and 250 employees for violating the obligations arising from the provisions of Section 10 of the Act (e.g. for failure to comply with the obligation to designate a responsible person, for failure to implement a system of internal verification of notifications, etc.), up to EUR 50,000.

In connection with the above-mentioned changes in the legal regulation of whistleblowing in Slovakia, employers with at least 50 employees, or selected groups of employers such as public authorities, financial institutions, or entities focusing their business activities on transport and the environment, should pay particular attention to this topic as anti-social activities can occur quite frequently in business circles at various levels of management and operation within a company.

It is recommended and desirable in the future that smaller employers also adopt these rules and, in their own interest, adopt and set up an optimal internal system for screening notifications of anti-social activities, which includes adopting their own internal regulations at the level of the employer.

Employers with an internal whistleblowing screening system already in place should primarily focus on aligning existing internal whistleblowing regulations with the new legislation, as well as adapting or optimising the internal systems in place to comply with the stricter legal requirements.

What do the above changes mean specifically for your company? Are you interested in the topic of whistleblowing and need some detailed information?

Are you looking for help with creating internal regulations on whistleblowing or setting up an internal whistleblowing screening system in your company?

Do you already have an internal notification screening system in place, and would you like to make it more efficient or adapt it to your company's operations?

Please do not hesitate to contact us, we would be delighted to assist you.



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